



# California Regional Water Quality Control Board

## Santa Ana Region



Linda S. Adams  
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Arnold Schwarzenegger  
Governor

December 5, 2008

Dan Bott, Principal Planner  
Orange County Water District  
18700 Ward Street  
Fountain Valley, CA 92708

**CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS  
CERTIFICATION FOR BURRIS/LINCOLN BASIN RECONFIGURATION PROJECT  
AND BURRIS BASIN HABITAT MANAGEMENT PLAN, CITY OF ANAHEIM,  
COUNTY OF ORANGE, CALIFORNIA (OUR FILE NO. 302008-25)**

Dear Mr. Bott:

On September 29, 2008, this office received an application for a Clean Water Act Section 401 Water Quality Standards Certification (401 Certification) for the above referenced project. Included with the application were the following:

- Documentation showing that an application for a California Department of Fish and Game (CDFG) Lake or Streambed Alteration Agreement for the project has been submitted;
- A copy of the California Environmental Quality Act (CEQA) documentation, a Mitigated Negative Declaration, for the project and information showing that the CEQA documentation was approved by the Orange County Water District (OCWD) Board of Directors on September 18, 2008;
- A copy of the Application for a Department of Army Permit for the project, submitted to the United States Army Corps of Engineers;
- \$500 as payment for the base fee required to initiate the processing of a 401 Certification;

On November 4, 2008, this office received OCWD's check for \$2660 to complete the application fee required to process this application. However, a recent increase in State Water Resources Control fees, retroactive to July 1, 2008, required additional payment, and on December 4, 2008 OCWD submitted the remaining fee of \$892.48. Fees paid are for consideration of certification for the project, which would entail impacts to 1.24 acres of jurisdictional waters.

Pursuant to California Code of Regulations, Title 14, Chapter 3, Section 15096, as a responsible agency, the Regional Board is required to consider an EIR or Negative

***California Environmental Protection Agency***



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Declaration prepared by the lead agency in determining whether to approve a Section 401 Certification. A responsible agency has responsibility for mitigating and avoiding only the direct and indirect environmental effects of those parts of the project which it decides to carry out, finance, or approve. As required by Section 15096, the Regional Board has considered the Mitigated Negative Declaration (MND) prepared for the proposed project in approving this Certification. The Regional Board has determined that the MND proposed for this project is adequate, and that the mitigation proposed is sufficient to protect water quality.

This letter responds to your request for certification, pursuant to Clean Water Act Section 401, that the proposed project, described below, will comply with State water quality standards outlined in the Water Quality Control Plan for the Santa Ana River Basin 1995 (Basin Plan), and subsequent amendments:

1. Project description:

The proposed project encompasses the Orange County Water District's (OCWD) Burris and Lincoln Basins. These basins lie to the west of and adjacent to the Santa Ana River channel between the Lincoln Avenue and Ball Road bridges, in the City of Anaheim. The basins are used to impound Santa Ana River water for groundwater recharge. The basins comprise one of several recharge facilities that OCWD operates in northern Orange County. Additionally Burris Basin serves as a forebay for the Burris Basin Pump Station, which pumps water through a five mile pipeline to the Santiago Basins recharge facility. Burris Basin covers 125 acres and Lincoln Basin 10 acres. The project area operated as gravel quarry mining operations before 1973.

The proposed project entails the grading and excavation of portions of Burris and Lincoln Basins to increase the rate of groundwater recharge. Approximately the northern half of Burris Basin and the entire Lincoln Basin will be re-contoured. The silt material on the bottom of the basins will be overturned and existing deposits of thick clay material will be removed. Additionally, the western side of Lincoln Basin will be excavated and widened by 60 feet to increase the size of the basin by one acre. To allow for the re-contouring and excavation, the basins will be dewatered, except for the southern (forebay) end of Burris Basin. This area of the basin, maintained at a depth of 50 feet, will provide refuge for several species of non-native fish that inhabit the basin and that provide an important food source for the birds that live in and visit the area.

Project activities will displace 3.4 acres of a sandbar island that has formed in the northern section of Burris Basin. The island has become a nesting and foraging area for migratory and raptorial birds, including the federal Endangered Species Act (ESA) listed California Least tern (*Sternula antillarum brownii*), which has nested, in small numbers, on the sandbar island for the last several years. Other ESA listed bird species that have a moderate potential for occurrence at the site during certain times of the year include the brown pelican (*Pelecanus occidentalis*), Least Bell's vireo (*Vireo bellii pusillus*) and the snowy plover (*Charadrius alexandrinus*). Bird species such as the black skimmer (*Rynchops niger*), Forester's tern (*Sterna forsteri*), American white

pelican (*Pelecanus erythrorhynchos*), and the peregrine falcon (*Falco peregrinus*), listed under the California Endangered Species Act, are regularly found at the site at certain times of the year. The project entails creating a 2.4 acre sandbar island in the southern end of Burris Basin to replace the habitat and function of the existing one.

The proposed habitat management plan component of the project entails the removal of non-native trees and shrubs along the western shores of Burris Basin. The area will then be planted with native species to create a riparian woodland forest.

2. Location: Latitude 37°25'19" north  
Longitude 122°05'06" west,  
Township 4S, Range 9&10W, Section 13,  
Orange, California, USGS Quadrangle
3. Receiving water: Santiago Recharge Basins
4. Fill Area: 1.24 acres
5. Dredge volume: NA
6. Federal permit: NWP 27
7. Mitigation:

For the impacts to 1.24 acres of jurisdictional wetlands occurring in both basins, the following is proposed:

- A 5.8 acre riparian plant community corridor around the western shoreline of Burris Basin will be created. Approximately 307 non-native trees and shrubs will be removed. The area will be prepared for planting and a variety of native trees and shrubs will be planted. An ongoing maintenance and monitoring program, with performance standards, will be conducted. The performance standards are described in the Habitat Management Plan and have been accepted by the Department of Fish and Game and the ACOE.
- A 2.4 acre nesting and roosting island will be created in the southern section of Burris Basin. This island will replace the function of the current approximately 3.4 acre sandbar island that will be removed by the project. The newly constructed sandbar island will be formed out of excavated spoils and specifically designed as a nesting and roosting area for the least tern and other foraging birds. Design features include appropriate elevation to be above water fluctuations, steep side slopes to deter nesting in areas of fluctuating water levels, side slopes of compacted clay to hold form, surface consisting of a 4-inch sand substrate, and clay tiles placed to provide protection to fledglings. OCWD will implement an ongoing maintenance program for the island to support appropriate habitat and conditions for nesting birds for upcoming seasons. The



island will be placed outside of the area of the basin that will be maintained regularly for recharge.

- To compensate for the loss of nesting habitat during project construction (expected to begin in January 2009 and to be complete in September or October 2009), a series of temporary floating islands, under the approval of USFWS and CDFG, will be placed in the remaining pool in the southern part of the basin. Sand will be placed on top of the islands to create nesting habitat.
- In addition, to compensate for temporary construction impacts to nesting birds, OCWD will enhance nesting habitat in an offsite California Least Tern mitigation site. Under the approval and direction of the USFWS, OCWD will enhance either a 5 acre site in the Santa Ana River Marsh near the mouth of the Santa Ana River or the current California Least Tern reserve, located in Huntington Beach State Beach. These activities will occur during 2009.

**This 401 Certification is contingent upon the execution of the following conditions:**

1. The mitigation described above shall be timely implemented.
2. The OCWD shall complete the measures<sup>1</sup> proposed to reduce impacts to aquatic life found in the remaining Burris Basin pool (deep pool near the Pump Station) during project activities. OCWD proposes to keep the deep pool area five acres in size with an approximate maximum depth of 50-feet and maintain a 100 foot dry land buffer between construction activities and the deep pool. An aeration unit (s) will be installed within the deep pool area to ensure adequate levels of dissolved oxygen will be maintained. In addition, the area will be monitored daily by OCWD staff. If these measures are modified or not completed, then justification shall be provided to the Regional Board, ACOE and DFG staff and other methods to reduce project impacts to aquatic life of the deep pool shall be taken in consultation with Regional Board, ACOE, and DFG staff.
3. Sediment removal and construction activities shall not cause dissolved oxygen (D.O.) in the remaining Basin pool to be depressed below 5.0 mg/l, or if the background D.O. level is below 5 mg/l, the discharge shall not cause a further depression, as a result of controllable water quality factors. A baseline level of D.O. shall be determined for the deep pool of Burris Basin before the project commences. Monitoring for dissolved oxygen shall be conducted weekly during construction at depths of one foot and five foot below the surface of the water. Test results shall be submitted to the Regional Board staff within 48 hours of testing, via electronic mail. If after four weeks of testing the test results indicate that DO levels are maintained at 5.0 mg/L or at the pre-project baseline

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<sup>1</sup> Submitted via email by Dan Bott of the OCWD on October 29, 2008.

condition, no further testing is required, unless dictated by other circumstances, as determined by the Executive Officer.

4. Waters of the Region shall be free of changes in turbidity that adversely affect beneficial uses. Project activities shall not cause an increase in turbidity in the deep pool, from the pre-construction baseline condition, when compared with turbidity monitored during construction, that exceeds the following:

Baseline	Maximum Increase
0-50 NTU	20%
50-100 NTU	10 NTU
Greater than 100 NTU	10%

Monitoring for turbidity shall be conducted from representative areas on a weekly basis during basin contouring and excavation activities at depths of one foot and five feet below the water surface. Test results shall be submitted to Regional Board staff within 48 hours of testing, via electronic mail. If after four weeks of testing, the test results indicate that turbidity levels are within the maximum increase range, no further testing is required, unless dictated by other circumstances, as determined by the Executive Officer .

5. All requirements of the DFG Streambed Alteration Agreement and ACOE 404 permit for the project shall be completed. Monitoring reports that are required by those permits to this Agency shall be submitted in accordance with the required schedule.
6. The project proponent shall utilize Best Management Practices during project construction to minimize the controllable discharges of sediment and other wastes to drainage systems or other waters of the state and of the United States.
7. Substances resulting from project-related activities that could be harmful to aquatic life, including, but not limited to, petroleum lubricants and fuels, cured and uncured cements, epoxies, paints and other protective coating materials, portland cement concrete or asphalt concrete, and washings and cuttings thereof, shall not be discharged to soils or waters of the state. All waste concrete shall be removed.
8. Motorized equipment shall not be maintained or parked within or near any stream crossing, channel or lake margin in such a manner that petroleum products or other pollutants from the equipment may enter these areas under any flow conditions. Vehicles shall not be driven or equipment operated in waters of the state on-site, except as necessary to complete the proposed project. No equipment shall be operated in areas of flowing water.

9. Adherence to the requirements of this certification does not relieve the proponents of this project from compliance with requirements of local, county, other state, and federal agencies.

**Under California Water Code, Section 1058, and Pursuant to 23 CCR 3860**, the following shall be included as conditions of all water quality standards certification actions:

- (a) Every certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section 13330 of the Water Code and Article 6 (commencing with Section 3867) of this Chapter.
- (b) Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to Subsection 3855 (b) of this Chapter and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
- (c) Certification is conditioned upon total payment of any fee required under this Chapter and owed by the applicant.

This discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ (Order No. 2003-0017-DWQ), "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification" which requires compliance with all conditions of this Water Quality Standards Certification. Order No. 2003-0017-DWQ is available at [www.swrcb.ca.gov/resdec/wqorders/2003/wgo/wgo2003-0017.pdf](http://www.swrcb.ca.gov/resdec/wqorders/2003/wgo/wgo2003-0017.pdf).

This letter constitutes a conditional water quality standards certification. Although we anticipate no further regulatory involvement, if the above conditions are changed, any of the criteria or conditions as previously described are not met, or new information becomes available that indicates a water quality problem, we may formulate Waste Discharge Requirements for the project.

In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of section 401 (d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification.

In response to a suspected violation of any condition of this certification, the SARWQCB may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the SARWQCB deems



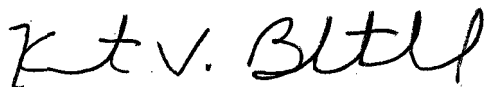
appropriate. The burden, including costs, of the reports shall be reasonable in relation to the need for the reports and the benefits to be obtained from the reports.

In response to any violation of the conditions of this certification, the SARWQCB may add to or modify the conditions of this certification as appropriate to ensure compliance.

Pursuant to California Code of Regulations Section 3857, we will take no further action on your application. This letter constitutes a technically conditioned water quality certification. Please notify our office five (5) days before construction begins on this project.

If you have any questions, please call David G. Woelfel at (951) 782-7960, or Mark Adelson at (951) 782-3234.

Sincerely,



for GERARD J. THIBEAULT  
Executive Officer

cc: U.S. Army Corps of Engineers – Forrest Vanderbilt  
U.S. Environmental Protection Agency, Supervisor of the Wetlands Regulatory  
Office – Tim Vendlinski (WTR-8)  
State Water Resources Control Board, DWQ - Water Quality Certification Unit  
State Water Resources Control Board, OCC –  
California Department of Fish and Game – Naeem Siddiqui

